86-278

Supreme Court, U.S.
FILED
AUG 11 1986
JOSEPH F. SPANIOL, JR.
CLERK

DOCKET NO. _____

IN THE SUPREME COURT
OF THE
UNITED STATES

FREDERICK G. JENSEN,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT,

In The Matter Of

A PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Frederick G. Jensen
Pro se
P. O. Box 372
Irvington, Virginia
22480

(804) 438-5222

QUESTIONS PRESENTED

1. Does the theory of constitutional foundation that government is for people of fundamentally differing views sweep so broadly as to permit the doctor who refuses to do any abortions, to refuse to assist where complications rise in his colleague's cases? Or, is justice equal for all? Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705 (1973), (Pp. 117, 709 in the reporters, respectively).

2. Does petitioner have a right to be heard based on the law that abortion on demand is an act, mala in se, and a great and Heinous misdemeanor under the common law? (Pp. 120, 709)

3. Can it be asserted American statutes are not derived from the common law--specifically abortion statutes--supportable in historical fact and law: (Pp. 129, 715).

4. Is the question of life one of fact for a jury? (Pp. 131, 716).

5. Does the archaic "quick with child" equate with the more modern "in family way"? Or, is "quick" a legal term referring to pregnancy in the 3rd, 4th, and up to the end of the 5th month? (Footnote 20, Pp. 132, 716).

6. Can the early American common law cases on abortions, pro and con, be reconciled? (Footnote 27, Pp. 135, 718).

7. Did Lord Ellenborough's Statute, 43 Geo. III, c. 58 (1803), the anti-abortion law, replace 21 Jac. I, c. 27 (1623), which made it a felony to conceal the birth of a child afterward found dead? (Pp. 136, 718).

8. Allowing abortion was viewed with more or less disfavor according to the times, is it possible

to restate that fact by asserting there is now a certain right to abort? (Pp. 140, 720).

9. May a government policy decision to risk maternal health, scientifically based on a comparison of the statistics--the death rate for deliveries with the death rate for abortions--be advocated by the Supreme Court? (Pp. 149, 725).

10. Have the courts held the female's right of privacy to fail, under the right of the unborn to life? (Pp. 152, 726).

11. Is the right to destroy the unborn any part of either the legal marriage contract or the marriage in common law? (Pp. 153, 727).

12. Does the inalienable right to life, health, and safety arise ab initio by reason of the state's

interest? (Pp. 154, 727 and 159, 729, 730).

13. Is the custom of contemplating the unborn as if a person living, in certain cases, a mere legal fiction? (Pp. 162, 731 and 163, 164, 732).

14. May a retired seaman appear pro se under Title 28, Section 1916? May he complain to preserve his earned pension payments as against the government?

15. Does a taxpayer, whether a merchant seaman or not, have the right to relief by mandamus, injunction, and/or declaratory judgment under Title 26, Section 6334 (d) (1) and (2) against seizure by the Internal Revenue Service?

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Docket No. _____

IN THE SUPREME COURT
OF THE
UNITED STATES

Frederick G. Jensen,
petitioner,

v.

UNITED STATES OF AMERICA,
respondent,

In the Matter of

A PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

OPINION BELOW

Petitioner before the United States Supreme Court, October Term, is Frederick G. Jensen, appellant in Jensen v. United States, No. 85-1504, in the U. S. Court of Appeals for the Fourth Circuit, on a judgment of frivolity when income was declared but taxes not self-assessed and voluntarily paid, decided 25 June 1986, and its order of 28 July 1986 approving appellant's amended

petition for rehearing of July 7th, together with its order denying the original petition for a rehearing of 5 July 1986;

JURISDICTION

And, to permit petitioner to apply for the Court's Writ of Certiorari under Title 28, Section 1254 (1),

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon petition of any party to any civil...case, ...after rendition of judgment or decree:

and Section 2101 (c),

> ...any writ of certiorari intended to bring any judgment or decree in a civil action, ...before the Supreme Court for review shall be ...applied for within ninety days after the entry of such judgment or decree.

FEDERAL RULES INVOLVED

And, under Rules 17 (a) and 18, Rules of the Supreme Court.

STATEMENT OF THE CASE

This case was thrown out of the

Court of Appeals Fourth Circuit as a tax protestor's case. It was not heard on its merits--the right of the unborn to protection under the Fifth Amendment, U. S. Constitution. No taxpayer, citizen, or civilized human being resident in a land under law is bound to acquiese mindlessly to this current slaughter of the innocent.

STATEMENT OF FACTS

Petitioner refused to pay any tax to government from 1978 onward, no more no less, so that his right to complain in court about his unwilling participation in the national destruction under alleged law of the unborn might not be mooted thereby. Taxes credited paid and/or refunded to him from time to time were derived from withholding payments made by his employer, seizure by the I.R.S., and payment under protest. Just how these sums are allocated to

interest, penalties, taxes, fines, and refunds is not known to petitioner. The request for receipts was never complied with. See Title 26, Section 6313 of the I.R.C.

REASONS FOR GRANTING WRIT

Petitioner is characterized and perhaps stereotyped by the courts below as "empty head white heart" and a "breed who confuses the courts with a soap box at Hyde Park Corner." In fact, petitioner believes he is a sovereign citizen in a free country. He is surely not the subject of any King. He is no man's subject. Thus, he believes he has the right and duty under law to use all means he has to redress the wrong he endures as a citizen of a nation that terminates by law the lives of the innocent unborn guilty of no fault under law. Since it was the Supreme Court that apparently made abortion on demand possible by its

decision in a certain case, it stands to reason the national interest is most quickly, completely, and painlessly served where the court hears cases like this one, presenting an opportunity to clarify and/or develop its reasoning.

The complaint in this case reaches to the Supreme Court's decision in Roe v. Wade, cited above, recently held stare decisis. It is unusual and covered partly by Rule 17 (a). Since the right to review a decision of the Supreme Court was not addressed by either of the courts below in holding this suit frivolous, the Court surely has jurisdiction of a real question. Rule 18 may apply because failure to decide promptly may result in many more fetal deaths, who will not be heard in any court on earth.

Petitioner's standing is covered

by questions 14 and 15, above, and 14 and 15 below in the arguments.

Rule 21.5 states:

> The failure of petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be sufficient reason for denying his petition.

Therefore, petitioner prays for an oral hearing.

ARGUMENT

1. The theory of constitutional foundation that government is for people of fundamentally differing views does not explain the maxim, the law is the same for all. (Pp. 117, 709 as reported, respectively). The ethic underpinning medical abortion cannot be polarized fairly. A doctor urging medical necessity in defense of a charge of doing an abortion criminally, assumes the burden of proof. What defense has he if the abortion was done on demand?

Some of the problem was before the Court in Simopoulos v. Virginia, 76 L. Ed. 755, 103 S. Ct.--(1983), No. 81-185.

2. The Court granted Roe standing because the claim was said to be constitutional on its face. Petitioner's distress confers standing on clearer ground, that abortion is mala in se, a great and heinous misdemeanor in common law, by ancient authority. (Pp. 120, 709).

3. The operation of the common law in America was intimately involved with abortion statutes. In case Hunter v. Wheate, 289 F 604, 607 (1923), the court invoked the "clean hands" rule against both parties, where there was a plea and a cross-plea in a suit over fees and care after an abortion performed. (Pp. 129, 715).

4. The Virginia Code 32.1-249, 264 defines fetal death for statis-

tical purposes. Questions like, Is a heartbeat present? Are there brainwaves? Do movements of flexion and extension appear? Does the umbilical cord pulsate? are questions of fact for a jury. (Pp. 131, 716).

5. The Court's reliance on Dorland's Illustrated Medical Dictionary for the meaning of "quick" is misplaced. The Oxford English Dictionary states:

> 4. Const. with a. Quick with child, said of a female in the stage of pregnancy at which the motion of the foetus is felt. Now rare or obs. 1774 Goldsm. Nat. Hist. (1776) II. 43 Women... quick with child, as their expression is, at the end of two months.

No legal definition is found among the 29 offered. (Footnote 20, Pp. 132, 716).

6. The holding of Commonwealth v. Bangs, 9 Mass. 387, 388 in (1812) that,

> ...the averment that the woman was quick with child...is a

necessary part of the indictment (for abortion)...

can be reconciled with Chitty's 4 count indictment for abortion in 1799 (and one for assault and battery) in 3 Chitty, Crim. Law, p. 798. (Note 27, Pp. 135, 718). See also footnote (a), Bangs. See Mills v. Commonwealth, 13 Pa. 631 (1850) for a complete statement of common law abortion in America.

Assault and battery do not amount to abortion and abortion need not involve an assault with battery. To confuse the two is to abort process.

7. The legal status in earlier times of what we now call abortion must be evaluated in the light of the fact that 21 Jac. I, c. 27 (1623) was repealed in England upon the enactment of 43 Geo. III, c. 58 (1803). The former dealt with women who murdered their babies to conceal the birth, the

latter with what we call abortion. In colonial times a servant girl under indenture had to work an extra year when she gave birth to an illegitimate child, i.e., the social context to which young girls had to conform was different than later. There is no evidence that women were murdering their babies at a time when abortion was a widespread practice. (Pp. 136, 718).

8. This question is important because it pinpoints the logical non sequitur that concludes the wide-ranging historical analysis of abortion made in Roe, which is offered as support for its constitutional-on-the-face view of abortion. (Pp. 140, 720).

9. If one can admit the Court does not initiate government policy, nor was any such policy in question in Roe, then one may be able to acknowledge that its interpretation of these

statistics is faulty. Women, who have available both contraceptives and abortions, may have the same intent in using either or both, i.e., to avoid pregnancy both before or after the fact. They may then have several abortions in any nine months, danger ignored. (Pp. 149, 725).

10. Courts have related the right of female privacy to the right of the unborn to life under common law from Union Pacific v. Botsford, 141 U.S. 250, 11 S. Ct. 1,000, 35 L. Ed. 734 (1891), (Pp. 152, 726) back to ancient times in the Eyre of Northhamptonshire, 1329-30: 3-4 Edward III, Vol. 1, Selden Society, London, 1983, p. 179, (From Ot. Coll. Ln.). Women condemned to death were not executed if they were pregnant. The court's power to examine the woman existed under the writ de ventre inspiciendo. Nor have courts put to death the unborn of condemned mothers within

the memory of men living. (Pp. 152, 726).

11. The pregnant woman viewing life in terms of better or worse; richer or poorer; in sickness and health; (Pp. 153, 727) and possibly in terms of the legal stigma attaching to bastardy and unwed maternity possesses no fundamental right of privacy allowing destruction of the conceptus under the laws of statutory marriage, or the rules of common law marriage. No such right is any part of the marriage contract, commonly.

12. The right to life of the gestating unborn is not dependent from or conditioned upon the state's interest. Where life exists it is ipso facto, inalienable: Jefferson, Declaration of Independence. (Pp. 154, 727). Nor does the 14th Amendment have anything to do with it, but the 5th Amendment does, whose roots, scholars say, go

back to the original tax protestors at Runymede in 1215. (Pp. 159, 729, 730).

13. The custom of contemplating the unborn as living persons for the purpose of determining rights or interests gotten by inheritance, or for other devolution of property, is a legal fiction. Neither birth nor viability make workable limits, today, upon which the inalienable right rests. (Pp. 162, 731; Pp. 163, 164, 732). It is no great mystery that rights are equal but persons are not, usually. Today, that the unborn have rights means that all others are bound to respect the unborn, as their condition of life requires.

14. Petitioner is a retired seaman (holding the 9th issue of his master's license and discharges from over 100 U. S. merchant ships from 1938 to 1982), whose prayer the United States Supreme Court may hear under Title 28, Section 1916:

> In all courts of the United States, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages...or the enforcement of laws for their health or safety...

Pro se and "in their own names" have the same meaning in so many words and should be taken to mean what they say.

See Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982) where the Court broadly interpreted a seaman's right to wages, health, and safety under 46 U.S.C., Section 596. Whether it extends to government as the employer of seamen and covers pension payable by government may be new questions, but not so different as to indicate denial.

15. In February 1984 Kopsack, Breeden, and Hubbard, attorneys, Steamboat Road, Box 340, Irvington, VA, (804) 438-5522, filed in U.S. District Court, Eastern District of Virginia, Richmond Division, Civil Action No. CA

85-0648-R, complaining, among other things,

> ...9. On January 11, 1984, defendant (United States of America) levied upon plaintiff's (Jensen) bank account with Chesapeake National Bank, Kilmarnock, Virginia, to-wit: Account number 32338447706, and seized the contents thereof in the amount of $1,600.31, which said account contained accumulated social secutiry (sic) payments to plaintiff...

Seizure of the entire contents was contrary to Title 26, Section 6334 (d) (1) and (2), I.R.C.

Petitioner wishes to argue for mandamus, injunctive, or declaratory relief, as the Court may decide, to require the I.R.S. to stay within the law.

CONCLUSION

For the reasons stated herein petitioner prays the Writ of Certiorari to permit his suit to proceed on the merits, 110 pages.

Respectfully submitted,

Frederick G. Jensen
Pro se
P. O. Box 372
Irvington, VA 22480

August 1986 (804) 438-5222

AFFIDAVIT OF SERVICE

Hereby petitioner swears or affirms that service of this application for a Writ of Certiorari was made on counsel for defendant on this _____ day of August, 1986, by mailing _____ copies thereof in an envelope, with postage prepaid, addressed as follows:
James H. Love, Attorney
Tax Division,
Department of Justice,
P. O. Box 502
Washington, D. C. 20044

Frederick G. Jensen

86-278

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IN THE SUPREME COURT
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FREDERICK G. JENSEN,
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v.

UNITED STATES OF AMERICA,
RESPONDENT,

APPENDIX

Frederick G. Jensen
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HDP

APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Frederick G. Jenson (sic), Plaintiff,

v.

United States of America, Defendant.

Civil Action No. 85-0648-R

ORDER

This matter comes before the Court on defendant's motion to dismiss. Plaintiff Jenson (sic) instituted suit to obtain recovery of taxes paid in 1979 and 1980, which he contends were "erroneously, illegally and unconstitutionally assessed and collected." Because Jenson had claimed an income tax credit for taxes used to fund abortions, the Internal Revenue Service had penalized him $500 for filing a "frivolous" income tax return within the meaning of I.R.C. § 6702.

Jenson's complaint apparently proceeds on two theories: that his

religious beliefs prevent the payment of taxes which are used to fund abortions, and that "Congress has no constitutional authority to lay and collect taxes which are used to fund abortions."

As to Jenson's first argument, "(t)axpayers generally are not permitted to avoid payment of a tax when their objections concern the manner in which government revenues are expended." Olsen v. C.I.R., 709 F.2d 278, 282 (4th Cir. 1983); see also, Autenreich (sic) v. Cullen, 418 F.2d 586 (9th Cir. 1986), cert. denied, 397 U.S. 1036. Cf. United States v. Lee, 455 U.S. 252, 260 (1981) ("Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisteing the tax.") As the Ninth Circuit has stated,

> "nothing in the Constitution prohibits the Congress from levying a

> tax upon all persons, regardless of religon (sic), for support of the general government. The fact that some persons may object, on religious grounds, to some of the things that the government does is not a basis upon which they can claim a constitutional right not to pay a part of the tax... The Income Tax Act... taxes plaintiffs like all others, because they are citizens or residents who have taxable income. On matters religious, it is neutral."

Autenreich, 418 F.2d at 588; see also Lull v. Commissioner, 602 F.2d 116 (4th Cir. 1979).

Jenson argues, however, that Congress has no authority to require payment of taxes which are used, in part, to fund abortions. This Court must hold that Jenson has no standing to assert this claim. Plaintiff proceeds on the basis of the Tenth Amendment, that the United States has no power not delegated to it by the Constitution. From there, he continues by stating that courts have decided cases concerning the use of taxes to support military operations and

citing Graves v. Commissioner, 579 F.2d 392 (6th Cir. 1978). Jenson then concludes by analogizing those cases to the use of taxes in contravention of the Fifth Amendment (deprivation of life without due process) and the Tenth Amendment. He thus urges that the Court can hear his claim. The Court here assumes that Congress is indeed using Jenson's taxes to fund abortions, although the record contains no showing of specific Congressional grants of funds for this purpose. Nonetheless, the Court holds that the taxpayer has no standing to raise this challenge.

The requirements for taxpayer standing to challenge the constitutionality of Congressional taxing and spending measures were laid down by the Supreme Court in Flast v. Cohen, 392 U.S. 83 (1968). The Court there put forth two aspects of taxpayer standing. Id. at

102-03. The first concerns the logical link between a taxpayer's status and the type of legislative enactment attacked. Jenson meets this, since he alleges, under the taxing and spending clause, the unconstitutionality of Congressional power to tax and spend. Jenson, because he relies on the Tenth Amendment to challenge this particular spending power of Congress, does not meet the second element of Flast. This requires the taxpayer to show that the "challenged enactment exceeds specific constitutional taxing and spending power." Id. at 103.

In Flast, the Court distinguished a previous case, Frothingham v. Mellon, 262 U.S. 447 (1923), on the basis of the constitutional limitation asserted as a bar to the challenged enactment. There, the plaintiff maintained that the Tenth Amendment prevented Congress from exercising its

power to tax and spend. But, one arguing that the Tenth Amendment prevents a particular enactment is a third party "attempting to assert that States' interest in their legislative prerogative and not a federal taxpayer's interest in being free of taxing and spending in contravention of specific constitutional limitations." 292 U.S. at 105. Neither does "the Due Process Clause of the Fifth Amendment...protect taxpayers against increases in tax liability." Id. Jenson has no standing to assert that Congress use tax monies to fund abortions, as he has not established the appropriate nexus between the asserted Constitutional limitations, the Fifth and Tenth Amendments, and the challenged exercise of Congressional power.

Because of Jenson's claim of tax credit, the Internal Revenue Service assessed him a $500 penalty, under § 6702

for filing a frivolous tax return. The Court holds that this I.R.S. action was an appropriate one, as Jenson clearly falls within the parameters of § 6702. First, since he filed his returns after September 3, 1982, § 6702 applies to them. Second, the § 6702 penalty can be imposed upon any taxpayer filing a purported return failing to contain information from which the correctness of the reported tax liability can be determined or that clearly indicates that the tax liability shown is substantially incorect. Jenson's return satisfies either test. Finally, the taxpayer's state of mind when filing is not relevant to the § 6702 penalty, and his good faith does not preclude the assessing of one. Knottnerus v. U.S., 582 F. Supp. 1572 (N.D. Ill. 1984); Vaughn v. U.S., 589 U.S. 1528 (W.D. La. 1984). Section 6702 does not apply the "empty head,

white heart" standard.

Moreover, the Court determines that this suit for a refund never had any basis for being filed in the first place. Jenson's suit has wasted the time of the Court and of government attorneys. The Court therefore holds that an award of attorneys (sic) fees is appropriate here, since the refund action was clearly frivolous, vexatious, and obstructionist in purpose. Reed v. U.S., 581 S. Supp. 718 (D. Colo. 1984). The government attorneys are consequently ORDERED to submit, within ten days of the date of this order, documentation of their time and costs. Plaintiff has a further ten days within which to make known his objections to the award of fees.

Let the Clerk send a copy of this order to all counsel of record.

Date: Richard L. Williams
United States District Judge

N.B. The ORDER above was stamped, filed Oct 21 1985, Clerk, U.S. Dist. Court, Richmond, VA.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 86-1504

Frederick G. Jensen, Appellant,

versus

United States of America, Appellee.

Appeal from the United States District Court of the Eastern District of Virginia, at Richmond. Richard L. Williams, District Judge. (CA 85-0648-R)

Argued: 7 May 1986 Decided: 25 June 1986

Before MURNACHAN and WILKINSON, Circuit Judges, and BUTZNER, Senior Circuit Judge.

William A. Nunn, III for Appellant; James Love, Tax Division, Department of Justice (Roger M. Olsen, Acting Assistant Attorney General; Michael L. Paup; Gary R. Allen; G. Wingate Grant, Assis-

tant United States Attorney; Gregory S. Hrebniak, Trial attorney on brief) for Appellee.

PER CURIAM:

Frederick G. Jensen appears to be one of that breed who confuses the courts with a soapbox at Hyde Park Corner. He has sought to claim an abortion tax credit or deduction to extinguish his tax liabilities properly due in 1979 and 1980. Claims for refunds based on non-existent abortion tax credit have been denied, penalties imposed for improper procedure in that connection and interest has been assessed.

The district court properly decided those issues when they were raised in Jensen's refund suit. The court sua sponte under F. R. Civ. P. 11, allowed reasonable attorney's fees of $466.65 for no less than 9 hours at a rate of $51.85 per hour for bringing a

frivolous, vexations (sic) and obstructionist suit together with the $20.00 docket fee prescribed by 28 U.S.C. § 1923. It was correct in doing so, and Jensen and his counsel, William A. Nunn, III, against both of whom the fees and cost were assessed should have heeded the message.

The taking of the appeal approached contempt. Jensen's Refund Claims filed well before the suit was instituted candidly acknowledged: "My attorneys and I know there is no such thing as an abortion refund..." In that posture of things affirmance of the order of the district court is automatic.

In addition we readily award, against Jensen and his attorney, Nunn, jointly and severally attorney's fees and costs incurred by the Government on appeal. See 28 U.S.C. § 1912 and FRAP 38. The appeal was even more frivolous than the prosecution of the action in

the district court. The amount of $1500 suggested by the United States in lieu of particularized amounts for damages and single or double costs is approved. In the customary case there might well be occasion to remand for ascertainment of the appropriate amounts. However, the Government's suggestion is entirely reasonable and further drain on the time of the courts already unduly distracted by the commencement and continuation of Jensen's case is simply not warrented.

AFFIRMED AND AN AWARD AUTHORIZED IN LIEU OF DAMAGES AND DOUBLE COSTS

N.B. The above opinion and order of the Court of Appeals is stamped "UNPUBLISHED".

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 86-1504

Frederick G. Jensen, Appellant

versus

United States of America, Appellee

MOTION FOR A REHEARING

In Re: Court's Decision

June 25, 1986

For Appellee:

James Love, Tax Division

Department of Justice

For appellant:

William A. Nunn, III

Comes now Frederick G. Jensen, plaintiff-appellant in the above named case, to move pro se for a rehearing as follows:

1. Court may well hear certain new facts before characterizing appellant's "soapbox" behavior in support of its holding of frivolity:

2. Appellant's statement about tax refund regulations is not a fact in the Court's alleged context:

3. The fact of an offer made in District Court, Feb 29, 1984 to place

taxes due in escrow, as the law provides, is evidence to be considered in deciding the question of frivolity;

4. Appellant's concession an abortion suit is frivolous if abortion on demand is constitutional law, may well be considered in this case as the Court decides its frivolity;

5. Either appellant's refusal to pay taxes to support abortion's law is not criminal, or the government is obliged to proceed criminally in this case, since he is required to claim a refund in order to bring this suit under tax law and/or regulations.

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1) The Court finds Jensen, apellant, to be "one of that breed" in declaring his appeal "approached contempt". In doing so the Court upheld the finding of the District Court that the original suit was legal frivolity. Thus, in 250 words or less this Court has disposed of

the wound this taxpayer and all those citizens entitled to peace and order under law daily endure because of the widespread practice of abortion on demand.

Now a frivolous case, as one made out by an entertaining and amusing Hyde Park orator, might well fall within the legal definition of "frivolous", so as to warrant this single sentence judgment of the Court, but the fact is appellant has always, out of respect for our courts and the legal "code" theyuphold, spoken to the courts through his attorney. In the light of the facts below, it would be hard to understand how any reasonable person will persist in finding Jensen's behavior amusing to the point of legal frivolity.

Appellant was unable to sue, as being injured by the expenditure of United States general finds (funds, sic) to do abortions, because the I.R.S.

(Internal Revenue Service) failed to carry out its obligation to collect unpaid taxes for five years straight. Only after appellant, a retired seaman, settled in Virginia and complained to his new Congressman, did the I.R.S. move to collect. Appellant immediately contacted a local law firm to represent him.

To date appellant's legal costs have exceeded $20,000. The I.R.S. has by seizure collected a claimed $10,000 in taxes, overcollected an estimated $9,000 to $10,000 in withholding and other payments not credited, and contrary to the Fifth Amendment of the U.S. Constitution sold real property worth $10,000 to $12,000 for $2,100 allowing a net credit of $1,900 on taxes claimed due. Appellant bought this acre-plus of waterfront access property for $,500 ($7,500, sic), put up a shack for overnighting and tools, cleared a number of large oak trees, dug out the roots, put in culvert and road,

ran 120 feet of waterline 18" deep, mixed cement and laid a slab together with steel and concrete pilings, dug in a sceptic tank, trenched 150 feet of 3 foot by 3 foot soil for a drainfield, and did this with hand tools by his own labor.

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While neither the money or the labor has any bearing on the sole issue, abortion, in this case, the facts may well put the Court on notice, it is not dealing with a frivolous breed of litigant, but a flesh and blood human, who, while traumatically concerned about the Supreme Court's abortion on demand decision in Roe v. Wade, 410 U.S. 113 (1973), is normally capable of paying and working his own way. Appellant may well be "wasting" more of his own money and time than the Court is willing to spend.

2) These facts in themselves do not entirely dispose of the Court's

"frivolous" holding, since a suit brought without regard for existing law also falls within one of the definitions of a frivolous, empty, and vexatious suit. The Court states, "Claims for refunds based on non-existent abortion tax credit have been denied...", (Citing no case.) and quoted Jensen's "candidly acknowledged: 'My attorneys and I know there is no such thing as an abortion refund...'." Here, the Court has overlooked the facts in the record, or does not have access to them.

Attorney for defendant-appellee discusses the legal procedure "prerequisite to the maintainance of a refund suit", as found in I.R.C. Section 7422, (1954) Title 26 U.S.C. where is stated: (p. 16, brief before the Court of Appeals:)

> (a) No suit prior to claiming refund.--No suit or proceeding shall be maintained in any court for the recovery of any internal

> revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

Thus, the purpose of the Abortion Refund was to comply with the law for maintaining a suit. It is surely clear no such refund in any amount spent to do an abortion will well restore the life of the unborn terminated thereby.

Subpart (b) liberally allows:

> (b) Protest or duress--Such suit or proceeding may be maintained whether or not such tax penalty or sum has been paid under duress.

Thus, there was no obligation on the part of the I.R.S. to press collection, as it did.

Nevertheless, the I.R.S. must assess or collect before a suit can be

brought, though the payment may or may not have actually been paid or protested. Jensen protested each year on the face of the tax form submitted and disregarded for years by the I.R.S. See note 9) on page 16 of defendant-appellee's brief, above. Further, form 843 was also duly filed with the tax court and it is on its face that Jensen's statement, above, appears.

The statement is evidence that the complaint in this case is not for a refund of taxes assessed/collected but an attempt to preserve the cause of action, that appellant is injured when intermingled tax funds are used by government to pay for abortions, directly and indirectly. It is surely clear no legal remedy will restore the life of the innocent unborn. The law protects such a life. The law may not stand idly and silently by, and even aid or accomplish its destruction.

3) There are more facts relating to appellant's intention in bringing this suit. His claim contesting the expenditure of his taxes, as above, might well have been brought under Treasury Regulations, Section 1.461 (a). The term "contest" is defined in Federal Tax Regulations (1984), Section 1.461-1-(b)-(2) by description,

> "A contest arises if there is a bonafide dispute as to the proper evalutation of the law or the facts necessary to determine the existence or correctness of the amount of the asserted liability. ...An afirmative act...such as including a written protest with payment of the asserted liability is sufficient to commence a contest..."

Subsection (c) continues:

> "A taxpayer may provide for the satisfaction of an asserted liability by transferring money...beyond his control...(ii) to an escrowee or trustee pursuant to a written agreement, (among the escrowee or trustee, the taxpayer, and the person who is asserting the liability)..."

Such a course of proceeding could have made more clear to the Court

the equities, i.e., injury and remedy, involved in this case: but more.

The suit in Federal Court began with a plea for injunctive relief in the Richmond District Court of Warriner, J., deceased, the day before Jensen's real property was sold at public auction on the steps of the Lancaster County Courthouse. The offer appellant made orally by his attorney to place the disputed amount in escrow fell by the wayside. The Court most certainly has grounds to find, as to behavior, appellant stands before the Court rather more unfarly abused than frivolous, see 1) above, and finally:

4) Councel for defendant-appellee based his case on a showing that tax protest cases are now, <u>per se</u>, frivolous. He did an excellent job quoting and citing over 20 cases by tax protestors which were denied for an array of reasons. In spite of the particular

rational in each case, the great number, all denied, implies, perhaps, that it is the nature of the suit, i.e., the tax protest, that is frivolous, and not the particular reason for which it is brought.

Allowing that this was Councel's póint, arguendo, this abortion case can be distinguished readily, both generally and particularly. Cases concerning defense, environmental, and religious tax collections or expenditures, all concern activity allowed by the Constitution, i.e., national defense, commerce and welfare, and religious freedom, respectively. This case concerns the practice of abortion which is nowhere mentioned in the written document, while, conversely, the life of the product of abortion is at least generally protected by the Fifth Amendment. This is true notwithstanding there is no attempt made in Roe v. Wade, above, to define the life of the unborn, except to exclude it from

protection under the Fourteenth Amendment, which is limited to human life after birth in its application.

Specifically, none of the above classes of cases involve expenditures directed to take the life of particular persons unborn, invariably and incontestably innocent.

However, settling the question of frivolity argued by councel for defendant-appelle in favor of plaintiff-appellant does not provide relief, i.e., settle this case. Councel's argument is simply not in point on the abortion question. The holding of the Court is the same.

The Court can reasonably, legally and most expeditiously find appellant's plea frivolous on the ground that abortion on demand is the constitutional law of the land--and always has been. Obviously, appellant does not consider

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Roe v. Wade, stare decisis, as the Supreme Court held in Akron. His actions viewed in that light only can be surmised to be frivolous.

In the tax protest cases cited by Councel for defendant-appellee, the courts not only found the tax protest illegal, but nearly always coped with the contention of each particular suitor; no war was declared, there was no compliance with the London Treaty, no compliance with international law, etc. If the Court believes abortion is law, as perhaps it must, it has no obligation to reargue it here, nor has appellant urged such argument in full and complete detail. The original decision was made by the Supreme Court, which injures the nation and this taxpayer. This Court does not have the power to alter that decision, appellant believes.

What this Court owes plaintiff-appellant is a clear statement of its

reason for holding his plea frivolous. A flat statement that abortion is law and that appellant is bound to know it, is the apparent need of the Court. The Supreme Court could willingly fill in its own details or not. However, plaintiff-appellant believes the Supreme Court has no power to make or unmake our Constitution, and acts mala in se, like abortion can never be made legal.

5) See 3).

Wherefore petitioner prays the Court to proceed to a rehearing on the question of frivolity, or such amendment of its decision as the facts above may require.

/S/
Frederick G. Jensen
Pro se

Date: 7 July 1986

UNITED STATES COURT OF APPEALS FOR

THE FOURTH CIRCUIT

No. 86-1504

Frederick G. Jensen, Appellant,

versus

United States of America, Appellee.

MOTION TO AMEND THE

MOTION FOR A REHEARING

In Re: Court's Decision 25 June 1986

For Appellant:

F.G. Jensen, Pro se
P. O. Box 372
Irvington, VA 22480

For Appellee:

James Love
Tax Div.
Dept. of Justice

Comes now Frederick G. Jensen Plaintiff-appellant in the above case to ask the indulgence of the Court to permit him to add additional information concerning liens for 1984 taxes arising upon a Notice of Deficiency dated 26 June 1986 issued to defeat appellant's claim that

certain capital losses or abortion claims sustained as a result of tax auctions of his property on 1 March 1984 are deductable capital losses in calculating net taxable income for 1984.

DOCUMENTS:

1. Notice of Deficiency issued 26 June 1986.

2. Tax form and letter stating appellant believed no tax protest was open to him in 1984, since no tax was due.

3. I.R.S. audit purporting to show tax due.

4. Plaintiff-appellant's letter soliciting agreement of District Director Gerard R. Esposito for establishing an escrow account covering the disputed amount, pursuant to Federal Tax Regulations Section 1.461-1-(b)-(2) and (c).

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The dispute is over the character of a capital loss on tax sales of

property belonging to an "abortion protestor", whether it amounts to a legal loss and can properly be deducted on the face of the tax form, since it is an abortion deduction.

Appellant argues that regardless of the name given the deduction, the effect is to permit him to avoid (legal avoidance) the payment of taxes used in whole or in part to support abortion.

Internal Revenue Code Section 7430 (d) provides a remedy for multiple actions:

> For the purposes of this section, in the case of--
>
> (1) multiple actions which could have been joined or consolodated, or (2) a case or cases involving a return or returns of the same taxpayer which could have been joined in a single proceeding in the same court,
>
> Such actions or cases shall be treated as one civil proceeding regardless of whether such joinder or consolodation actually occurs, unless the court in which

such action is brought determines in its discretion, that it would be inappropriate to treat such actions or cases as joined for purposes of this section.

Wherefore plaintiff-appellant begs the Court to decide whether the above type of "abortion deduction" is legal for tax purposes.

/S/
Dated: 9 July 1986 Frederick G. Jensen

F. G. Jensen
P. O. Box 372
Irvington, VA 22480

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1)

LETTER: 26 June 1986
From: I.R.S.
District Director
Certified mail
To: Frederick G. Jensen

Dear Mr. Jensen:

We have determined that there is a deficiency (increase) in your income tax as shown above. (See below, sic) This letter is a NOTICE OF DEFICIENCY sent to you as required by law....

Sincerely yours,

James I. Owens
Acting Commissioner
By

Enc. /S/ Gerard R. Esposito
District Director

Letter 531 (d) (Rev. 8-84)

LETTER: (531, continued)

December 31, 1984	$2,687.45
Secs.	
6651 (a) (1)	$ 268.74
6653 (a) (1)	$ 134.37

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2)

1040 U.S. Individual Income Tax Return
1984

(The tax form here transcribed contains the following information only.)

Frederick G. Jensen, S.S.No. 133-07-4073
P. O. Box 372
Irvington, VA 22480

Filing Status	1	1	Single
Exemptions	6a	1	Yourself
Income	7	(Fee)	$ 5,004.00
	8	Interest	2,491.48
	9c	Dividends	2,510.00

1040 (Continued)

Income 13 Capital Gain or Loss 237.18

16 Fully Taxed Pension 4,735.08

23 Total Income $14,977.74

/S. F. G. Jensen, 13 Apr '85

(Note attacjed info.)

Schedule D (form 1040) 1984

Part II Long-term Capital Gains & Loss

9 Home and Land

Date Acquired: 17 Feb '83

Date Sold: 1 Mar '84

Gross Sales Price: $2,100

Cost or other Basis: $14,310

Loss: $12,310 (N.B. $100 error)

200 Shares Chmp. Intl.

Date Acquired: 7 Oct '82

Date Sold: 7 Mar '84

Gross Sales Price: $4443

Cost or other Basis: $4,256,81

Gain: $186.19

12 Net long-term gain or (loss)
(loss) (-$100) $12,123.81

Single Entry Account of Property & Loss

$ 7,000, Cost of Heritage Pt. Land

2,100, I.R.S. Gross Sale Price
4,900

208, Survey cost
5,108

250, Title Search, Recording, Ins.
5,358

600, Clearing, leveling
5,958

2,400, Excavation, slab, piers
8,358

1,600, Sceptic tank, drainfield
9,958 (450 Cu. Ft.)

450, Waterline, 150 Ft.
10,408

1,150, Builders toolshed, shop
11,558

300, Culvert, road bed, 50' x 12'
11,858

125, Cement stores
11,983

327, Gravel, sand, lumber
$12,310 = (Loss)

2,100
$14,410, Total cost (investment)

Initialed: (F.G.J.)

LETTER: 13 April 1985
From: Frederick G. Jensen
To: District Director
Internal Revenue Service
Memphis, TN 37544-4444

Dear Sir:

...I have always reported income so as to show that I make a credible statement when I say, "I owe no tax to pay for abortions". I have no objection to reporting and do not wish to make a legal issue of this point.

On the other hand, I have returned to you my S. S. Pension checks, receiving no advice from you as to how you will credit the same to me, since I do not wish to be credited with that portion of government tax revenue which is derived from profits of the abortion industry. Please note, there are no reports of 1984 abortions available in the U.S. Statistical Abstract, but nobody in his right mind will deny that there were more than a million or so for which doc-

tors got paid (legally?) last year. Therefore, I do not include any portion of this amount as 1985 income. Thus, my total income amounts to $14,977.74....

I.R.S. sold a $7,000 parcel of land and improvements not valued,.... for $2,100. My alleged tax bill was credited with the residue after costs of the sale. Now, when this type of thing is done in the private sector, somebody usually ends up in jail. Therefore, I would advise you to credit me with losses of $12,3.0 (N.B. $100 error) and a taxable income under $2,667.74. (-$100) If you do this...I owe no tax for last year at all. So, I cannot refuse to pay it.

Sincerely yours,

/S/ F. G. Jensen

3)

INDIVIDUAL INCOME TAX EXAMINATION CHANGE

Department of the Treasury, I.R.S.

Name and Address of Taxpayer:

Frederick G. Jensen
P. O. Box 372
Irvington, VA 22480

Date of Report: 5/28/86

Soc. Sec. Number 133-07-4073

Form: 1040

Year: 1984

Filing Status: Single

Examining District: 054

Name of Examiner: Clinginpeel

In reply refer to : OE2302RLC

Capital gain/loss adjustment	$13,900.20
Adjustments to income and/or deductions--increase	$13,900.20
Plus taxable income as shown on return	1,617.48
Corrected Taxable income	15,517,68
Tax computed with 1 exemption	2,122.00
Self employment tax	565.45
Corrected Tax	$2,687.45

4)

LETTER: 9 July 1986
From: Frederick G. Jensen
To: Gerard R. Esposito
Internal Revenue Service
400 N. 8th Street
Richmond, Virginia 23240

Re: Deficiency Notice, 26 June 1986, $2,687.45 tax, Tax No. 133-07-4073

Dear Sir:

This is a letter of protest denying the above claim for unpaid taxes for 1984. No taxes are due as per return and covering letter.

Therefore, I request of you an excrow agreement may be reached covering the amount the Service claims, as provided for a "contest" and "escrow agreement" in Federal Tax Regulations, Section 1.461-1-(b)-(2) and (c).

Sincerely yours,

/S/ F. G. Jensen

FGJ:fgj
Cc U.S.
Circuit Court
4th District

UNITED STATES COURT OF APPEALS FOR

THE FOURTH CIRCUIT

No. 86-1504

Frederick G. Jensen, Appellant,

versus

United States of America, Appellee

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Richard L. Williams, District Judge.

Upon consideration of the appellant's pro se petition for rehearing, as amended,

IT IS ORDERED that leve to amend petition for rehearing is granted and the petition for rehearing is denied.

Entered at the direction of Judge Murnaghan with the concurrence of Judge Wilkinson and Judge Butzner.

For the Court,

John M. Greacen

CLERK

N. B. The above order of the Court of Appeals is stamped:
"Filed Jul 28 1986
U.S. Court of Appeals
Fourth Circuit"